IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition No.6873 of 2004

Transport Committee of Navi
Mumbai Municipal Corporation ..Petitioner

vs.

1. The State of Maharashtra
and others ..Respondents

Shri S.M.Oak for petitioner
Shri V.A.Thorat, Advocate General with Shri Y.D.Mulani, A.G.P. for respondent no.1.
Shri Y.S.Jahagirdar, Sr.Counsel with Shri G.S.Hegade i/b Hegade & Associates for respondent no.2.
Shri S.D.Bhate with Shri N.V.Walawalkar for respondent no.4
Shri J.D.Arodwad for respondent no.5.
Shri U.G.Kerkar for respondent no.6

CORAM: A.P.SHAH AND
S.C.DHARMADHIKARI JJ
2nd December,2004

P.C.

1. Heard Advocates.

2. The petitioner who is Chairman of Transport Committee of Navi Mumbai Municipal Corporation is inter alia challenging the action of Respondent No.2 CIDCO of selling the land admeasuring 4673 sq.meters bearing Plot No.1, Sector 20 situated at Turbhe Railway Station and the building standing thereon admeasuring 2693 sq.meters out of the said

property. The case of the petitioner is that the State Government vide its letter dated 11th December 1995 has taken a decision that the said property that is Turbhe Bus Depot should be handed over to respondent no.4 for respondent no.5 Navi Mumbai Municicpal Transport Undertaking as and by way of one time contribution from respondent no.2 and consequently respondent no.2 has no right to sell the said property admeasuring 4673 sq.meters which forms part of Turbhe Bus Depot which was agreed to be transferred to respondent no.4.

3. In 1979 respondent no.2 incorporated CIDCO Transport Corporation Limited as a public company. It was a subsidiary of Respondent No.2 and its share capital was held by respondent no.2 and its nominees. The object of the company was to carry the business of carriage of passengers by road within and around Navi Mumbai. Subsequently in 1980 the name of the company was changed to Bombay Metropolitan Transport Corporation Limited (BMTC for short). In Appeal No.747 of 1987 arising out of Writ Petition No.138 of 1986, this Court passed an order of winding up of BMTC and thereafter Provisional Liquidator already appointed was appointed as Official Liquidator. It appears that

after Navi Mumbai Municipal Corporation was established its Commissioner made a proposal to respondent no.2 to hand over Turbhe Bus Depot to Navi Mumbai Municipal Corporation free of cost. The respondent no.2 expressed inability to transfer the Bus Depot free of cost in view of Govt.Resolution dated 6th January, 1994 but suggested respondent no.2 to approach the State Govt. as any change would require Government's sanction. Finally in consequence of the discussion held by the Chief Minister on 27th November, 1995 in the presence of Ministers, non officials and the officials dealing with Navi Mumbai Administration, the then Secretary, Urban Development Department, Govt. of Maharashtra vide his D.O.Letter dated 11th December, 1995 informed respondent no.2 that the assets of respondent no.2 in Turbhe Bus Depot should be handed over to Navi Mumbai Municipal Corporation on the condition that the depreciated book value of the said land and built up property should be treated as contribution of respondent no.2 to Navi Mumbai Municipal Corporation for the purpose of Municipal Transport. It appears that the letter of the Secretary, Urban Development Department did not indicate the area of land and built up property of the bus depot which was agreed

to be handed over by respondent no.2 to respondent no.4. In pursuance of the directions from the Secretary, Urban Development Department, the Board of Directors of respondent no.2 vide Resolution No.6840 dated 21st December, 1995 approved handing over possession of the land and built up property of Turbhe Bus Depot admeasuring a plot area of 26,953 sq.meters along with the buildings and structures standing thereon. It was further resolved that the said property be transferred by Deed of Lease to be granted in favour of Respondent No.4 in consideration of a premium of Rs.5.51 crores and that such premium will not be paid by the Navi Mumbai Municipal Corporation but will be reckoned as a financial contribution of respondent no.2 to Navi Mumbai Municipal Corporation for organising and operating municipal transport system in Navi Mumbai. In pursuance of the Resolution possession of the said property was handed over by respondent no.2 of Turbhe Bus Depot containing a plot area of 26953 sq.meters along with the structure standing thereon to respondent no.4 on 7th January, 1996 and this was accepted by Navi Mumbai Municipal Corporation without any demurre.

4. Now after nearly eight years the petitioner has

approached this Court with a case that the petition plot admeasuring 4763 sq.meters also forms part of Turbhe Bus Depot and the said property ought to have been handed over to respondent no.4 Municipal Corporation. On the other hand respondent no.2 has maintained that bus depot and buildings were distinct from the petition plot admeasuring 4763 sq.meters and the buildings thereon. In the month of December, 2000 respondent no.2 has invited public tender for sale of the petition plot admeasuring 4763 sq.meters along with the buildings standing thereon. Neither the petitioner nor respondent no.4 took any objection to invitation of tender for sale of the petition plot along with the structure standing thereon at that time. Thereafter respondent no.6 requested for allotment of the petition plot along with the building standing thereon vide his application dated 20th February, 2004. Respondent No.2 made allotment of petition plot to respondent no.6 on the basis of his application for a lumsum amount of Rs.8 crores.

5. Having regard to the nature of the dispute between the parties we directed the Chief Secretary, State of Maharashtra to hear the respondent no.2 as well as Commissioner of Navi

Mumbai Municipal Corporation and examine the relevant documents and to make a report to this Court as to whether the petition plot admeasuring 4763 sq.meters forms part of Turbhe Bus Depot. The Chief Secretary after convening the meeting and examining the entire record filed a detailed affidavit before us. It seems that the Commissioner of Navi Mumbai Municipal Corporation who was present in the meeting did not even make a claim in respect of the petition plot. The material portion of the affidavit of the Chief Secretary reads as under:

> "I say and submit that the BMTC was operating bus service from the Turbhe Bus Depot and the Turbhe Bus Depot consisted of a plot of area of 26,953 sq.meters and building and structures thereon. This Bus Depot and the buildings thereon were distinct and separate from the petition plot admeasuring 4673 sq.meters and the building thereon of 2693 sq.meters. This is evident from the layout plan prepared by the CIDCO prior to handing over of the Turbhe Bus Depot to the Respondent no.4. The Turbhe Bus Depot and the petition plot was

separated by a compound wall which was in existence prior to handing over of the Turbhe Bus Depot to the Respondent No.4. Although some portion of the building structure on petition plot was occupied by the BMTC for administrative office, still rest of the building was occupied by the Respondent CIDCO for their administrative offices from the beginning.

I further say and submit that the Respondent No.2 in the month of December, 2000 invited public tenders for sale of the petition plot admeasuring 4673 sq.meters along with the building standing thereon. I further say and submit that the neither the petitioner nor the respondent no.4 took any objections to the invitation of tender for sale of the petition plot along with the structure standing thereon at that time.

I further say and submit that since the Respondent No.2 did not receive any response to the invitation of tender in the month of December, 2000, the Respondent No.6 requested for allotment of petition plot

along with the building standing thereon vide his application dated 20-02-2004. The Respondent No.2l made allotment of the petition plot to the Respondent No.6 on the basis of his application. The allotment of the plot to the Respondent No.6 was approved by the Board of director of the Respondent NO.2, vide its Board Resolution No.9007 dated 10.05.2004. The Commissioner of the Respondent no.4 who is also a Director of the Respondent no.2 2as aware about the disposal of this petition plot to the Respondent No.6.

In the premises, I say that the claim of the petitioner for handing over of the petition plot along with the building standing thereon to the Respondent No.4 as a part of Turbhe Bus Depot is not based on true facts and the petitioner has no enforceable right to claim handing over the said area to the Respondent no.4 and the action of the Respondent No.2 in transferring the property to respondent no.6 is justified."

(Emphasis supplied)

6. Learned Advocate General submitted and in our opinion rightly, that the Navi Mumbai Municipal Corporation had not made any protest at the time of accepting the allotment of Turbhe Bus Depot in 1996. Right from 1996 till respondent no.2 decided to sell the property to respondent no.6 no claim was set up by the Corporation to the petition plot. It is also seen from the affidavit of respondent no.2 that as far as petition plot is concerned only a portion thereof was being used by BMTC and rest of the building was all along used by respondent no.2 Considering the requirement of the Transport Committee we asked the learned Counsel appearing for the Navi Mumbai Municipal Corporation whether Corporation is prepared to buy the plot in question at the rate at which it was sold to respondent no.6. The learned Counsel, however, informed us that the Corporation is willing to pay only 50% of the reserved price. This is not acceptable to respondent no.2. Under these circumstances, no relief can be granted on the petition. Petition is accordingly dismissed.